



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

**Case No: CR205Mar14/SA002Apr17
CR125Nov14**

In the matter between:

The Competition Commission

Applicant

and

Alvern Cables (Pty) Ltd

First Respondent


Panel : N Manoim (Presiding Member)
M Mokuena (Tribunal Member)
M Mazwai (Tribunal Member)

Heard on : 15 November 2017

Decided on : 15 November 2017

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Alvern Cables (Pty) Ltd annexed hereto marked "A".



**Presiding Member
Mr Norman Manoim**

15 November 2017
Date

Concurring: Mrs Medi Mokuena and Ms Mondo Mazwai

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CT Case No. CR205Mar14

and CR125Nov14

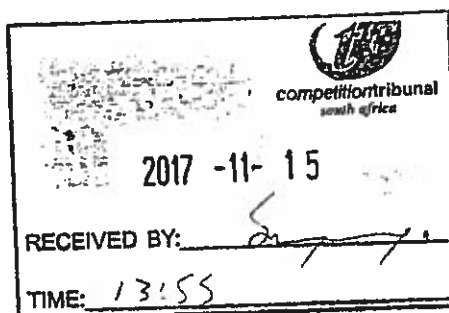
CC Case No. 2010Mar4981

In the matter between

COMPETITION COMMISSION

and

ALVERN CABLES (PTY) LIMITED



Applicant

Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND ALVERN CABLES (PTY) LIMITED IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(i) & (ii) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

The Competition Commission and Alvern Cables (Pty) Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this Settlement Agreement as an order of the Competition Tribunal in terms of section 27(1)(d) read with section 58(1)(a)(iii) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, on the terms set out below.

1. Definitions

For the purposes of this *Settlement Agreement* the following definitions shall apply:

- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "Aberdare" means Aberdare Cables (Pty) Ltd;
- 1.3 "Alvern" means Alvern Cables (Pty) Ltd;

- 1.4 **"Association"** means the Association of Electric Cable Manufacturers;
- 1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the *Act*, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.6 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the *Act*;
- 1.7 **"Complaint"** means the complaint initiated by the Commissioner of the Competition Commission in terms of section 49B of the *Act* under case number 2010Mar4981;
- 1.8 **"Indices"** does not connote the conventional meaning ascribed to the term "index" in economics, where the base value (typically of 100) is adjusted by a percentage from time to time to indicate the change in value of the underlying item monitored by the index. It refers to the various raw material items and their individual Rand values as listed from time to time on a document entitled "Quotation Bases". The Indices measure relative price changes of input costs from one time to another and are used in price adjustment formulas;
- 1.9 **"Parties"** means the *Commission* and *Alvern*;
- 1.10 **"Power cable manufacturers"** means *Alvern*, SOEW, Tulisa Cables (Pty) Ltd, Alcon Marepha (Pty) Ltd, CBI-Electric African Cables (Pty) Ltd, Phoenix Power Cables, Cabcon Technologies (Pty) Ltd, Silcom (Pty) Ltd, Malesela Taihan Electric Cable (Pty) Ltd, Norco Cables (Pty) Ltd, Kewberg Cables and Braids (Pty) Ltd and Aberdare Cables (Pty) Ltd;
- 1.11 **"Prescribed rate"** means the rate of interest determined by the Minister of Finance for debts owed to the State in terms of Section 80(1)(b) of the Public Finance Management Act no. 1 of 1999 (as amended) prevailing at the time when interest is due;



- 1.12 "**Price adjustment formula**" means any formula used to calculate the future prices of power cables which were quoted on present prices to accommodate fluctuations in the prices of the input costs;
- 1.13 "**Settlement Agreement**" means this agreement duly signed and concluded between *the Commission* and *Alvern*;
- 1.14 "**SOEW**" means South Ocean Electric Wire Company (Pty) Ltd;
- 1.15 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 3rd Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and
- 1.16 "**Tulisa**" means Tulisa Cables (Pty) Ltd;

2. The Complaint and Complaint Investigation

- 2.1 On 16 March 2010, the Commissioner, acting in terms of section 49B(1) of the Act, initiated a complaint under case number 2010Mar4981 against *Alvern*, *SOEW*, *Tulisa* and *Aberdare* for a possible contravention of section 4(1)(b)(i) and (ii) of the Act in the market for the supply of power cables ("*informal market conduct*").
- 2.2 The evidence obtained by the *Commission* through its investigation indicated that other companies, which were not part of the initial investigation, may also have been involved in the alleged conduct in contravention of the Act.
- 2.3 On 28 May 2010, the *Commission* expanded its investigations to include these firms: Alcon Marepha (Pty) Ltd, CBI-Electric: African Cables (Pty) Ltd, Phoenix Power Cables (Pty) Ltd, Cabcon Technologies (Pty) Ltd, Silcom (Pty) Ltd, Malesela Taihan Electric Cable (Pty) Ltd, Norco Cables (Pty) Ltd, Kewberg Cables and Braids (Pty) Ltd, and the Association as being party to price fixing, market division and collusive tendering in the power cable market ("*Association conduct*").
- 2.4 The difference between the *informal market conduct* and the *Association conduct*

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is that the *informal market conduct* took place outside of the relevant industry association whilst the *Association conduct* took place under the auspices of the *Association*. A summary of the conduct in the *informal market* and the *Association conduct* is set out below.

Informal market conduct

- 2.5 The *Commission's* investigation revealed that:
- 2.6 *Alvern, SOEW, Tulisa and Aberdare* agreed, alternatively engaged in a concerted practice, to directly or indirectly fix the selling price of power cables to wholesalers, distributors and OEM's from approximately May 2001 to at least 2010 in contravention of section 4(1)(b)(i) of the *Act*;
- 2.7 *Alvern and Aberdare* agreed, alternatively engaged in a concerted practice to divide markets by allocating customers in respect of the supply of power cables to wholesalers, distributors and OEM's from approximately 2001 to at least end 2007 in contravention of section 4(1)(b)(ii).
- 2.8 The *Commission* referred the *informal market conduct* under case number 018614 (re-allocated case no: CR205MAR14) to the *Tribunal* on 19 March 2014.

Association conduct

- 2.9. The *Commission's* investigation revealed that:
- 2.10. The *Power Cable Manufacturers*, including *Alvern*, by way of decisions by the *Association*, alternatively an agreement or a concerted practice, directly or indirectly fixed the selling price of power cables, alternatively a trading condition relating to the sale of power cables, through agreeing on the *Indices* which are used in *Price Adjustment Formulas* by its members. These *Indices* were referred to by the *Association* members as the "Quotation Base or Quotation Bases", and were circulated to all members monthly. The *Indices* were used by members who are involved in the manufacture and supply of power cables to customers in South Africa on a quotation basis from at least 2001 to August 2012 in contravention of section 4(1)(b)(i).



- 2.11. The *Commission* referred the *Association conduct complaint* under case number 019968 (re-allocated case no: CR125Nov14) to the *Tribunal* on 13 November 2014.

3. Admission

Informal market

- 3.1 *Alvern* admits that the agreement, alternatively concerted practice with *Tulisa*, *SOEW* and *Aberdare* to directly or indirectly fix the selling price of power cables to wholesalers, distributors and OEM's from approximately May 2001 to at least 2010 is in contravention of section 4(1)(b)(i) of the *Act*;
- 3.2 *Alvern* admits that the agreement, alternatively concerted practice with *Aberdare*, to divide markets by allocating customers in respect of the supply of power cables to wholesalers, distributors and OEM's from approximately 2001 to at least end 2007 was in contravention of section 4(1)(b)(ii) of the *Competition Act*.

Association conduct

- 3.3 *Alvern* admits that, by way of decisions by the *Association*, alternatively an agreement or a concerted practice, directly or indirectly fixed the selling price of power cables, alternatively a trading condition relating to the sale of power cables, through agreeing on the *Indices* which are used in *Price Adjustment Formulas* by its members. The conduct commenced from at least November 2003 to June 2012 in contravention of section 4(1)(b)(i).

4. Agreement concerning Alvern's future conduct

- 4.1 *Alvern* agrees to:

- 4.1.1 Fully cooperate with the *Commission* in relation to the prosecution of the *Complaint* referrals. Without limiting the generality of the foregoing, *Alvern* specifically agrees to:



(a) Testify in the *Complaint* referrals (if any) in respect of alleged contraventions covered by this *Settlement Agreement*; and

(b) To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this *Settlement Agreement*.

4.1.2 Desist from the conduct described above.

4.1.3 Develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include the following:

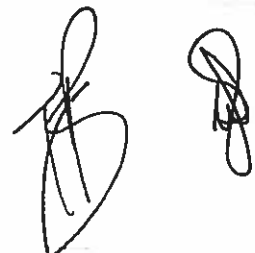
4.1.3.1 The identification by *Alvern* of competition risks relevant to its business and the monitoring thereof;

4.1.3.2 provide specific training on competition law aspects particularly relevant to *Alvern*;

4.1.3.3 ensure that such training will be made available to all new employees joining *Alvern*. Furthermore, *Alvern* will update such training annually to ensure on an on-going basis that it and its employees cannot engage in any anti-competitive activities.

4.1.4 To submit a copy of such compliance programme to the *Commission* within 60 days of the date of confirmation of the *Settlement Agreement* as an order by the *Competition Tribunal*;

4.1.5 To circulate a statement summarising the contents of this *Settlement Agreement* to all management, operational staff and members of *Alvern*

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within 60 days from the date of confirmation of this *Settlement Agreement* by the *Tribunal*;

5. Administrative Penalty

- 5.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the *Act*, *Alvern* accepts that it is liable to pay an administrative penalty.
- 5.2 *Alvern* undertakes to pay an administrative penalty in the amount of R4 736 375.61 (Four Million Seven Hundred and Thirty Six Thousand Three Hundred and Seventy Five Rand and Sixty One Cents).
- 5.3 This amount is equal to 5% of *Alvern*'s 2010 affected turnover and does not exceed 10% of *Alvern*'s total annual turnover in the Republic and its exports from the Republic during *Alvern*'s preceding financial year.

6. Terms of Payment

- 6.1 *Alvern* will pay the amount set out in paragraph 5.2 above to the *Commission* in four instalments over eighteen (18) months as follows:
- 6.1.1 The first instalment in the sum of R2 000 000.00 (Two Million Rand) will be paid within three (3) months of the *Tribunal*'s order;
- 6.1.2 The second instalment in the sum R1 000 000.00 (One Million Rand) will be paid within eight (8) months of the *Tribunal*'s order;
- 6.1.3 The third instalment in the sum of R1 000 000.00 (One Million Rand) plus interest at the Prescribed Rate will be paid within fourteen (14) months of the *Tribunal*'s order;
- 6.1.4 The fourth instalment in the sum of R736 375.61 (Seven Hundred and Thirty Six Thousand Three Hundred and Seventy Five Rand and Sixty One



Cents) plus interest at the Prescribed Rate will be paid within eighteen (18) months of the *Tribunal's* order.

6.2 No interest will be levied upon the administrative penalty for the first twelve (12) months from the date on which this *Settlement Agreement* is made an order of the *Tribunal* and thereafter interest will be levied on the remaining outstanding balance at the *Prescribed rate* at the time when interest is due.

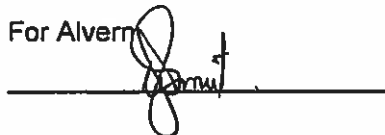
6.3 The penalty must be paid into the *Commission's* bank account which is as follows:
NAME: THE COMPETITION COMMISSION
BANK: ABSA BANK BUSINESS BANK
ACCOUNT NUMBER: 40-8764-1778
BRANCH CODE: 632005
PAYMENT REF: 2010MAR4981ALVERN

7. Full and Final Settlement

This agreement, upon confirmation as an order by the *Tribunal*, is entered into in full and final settlement and concludes all proceedings between the *Commission* and *Alvern* relating to any alleged contraventions of the *Act* by *Alvern* that is the subject of the *Commission's* investigation under case number 2010Mar4981 referred to the *Tribunal* under case number 018614 (re-allocated case no: CR205MAR14) and 019968 (Re-allocated case number CR125Nov14).

Dated and signed at GERMISTON on the 14 day of NOVEMBER 2017

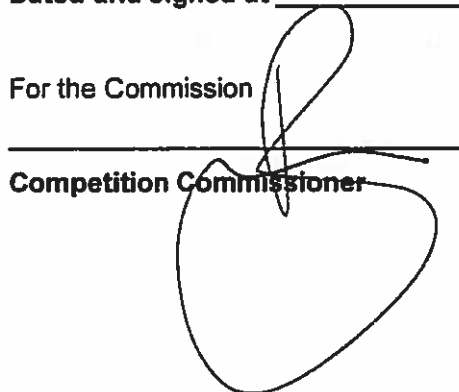
For Alvern



Managing Director

Dated and signed at PRETORIA on the 15 day of NOVEMBER 2017

For the Commission



Competition Commissioner